

## SECTION TWO STANDARD CONTRACT INFORMATION

### 2.01 Contract Term and Renewal Options

The State intends to enter into an implementation contract with an effective period of May 19, 2004 through October 3, 2005. Maintenance Contracts will have separate effective dates.

#### Extension Option

The State reserves the right to extend the contract period for an additional period of time, not to exceed 6 months, beyond the normal expiration date of the contract, upon mutual written agreement by both parties.

#### Support, Enhancements and Maintenance Option

##### Support, Enhancements and Maintenance Agreement

At "no-additional-cost", Monday through Friday, 8 a.m. Central Time (CT) to 6 p.m. CT Warranty and Maintenance Plan to provide remedial system maintenance and support services, with escalation, upgrades, enhancements, changes, consultation, training, and support for a period of one (1) year following acceptance of the installed, fully functional and operational system. This Plan must, at a minimum, include:

- Vendor contact, phone number (hot lines / 800 numbers), email address, and procedure required to report system outages/problems and to request consulting services or other appropriate service;
- A detailed listing of the services provided, escalation policies and procedures, updates, warranty and maintenance, to be provided including guaranteed service levels (and any exceptions or exclusions from these services) that are provided during the 12-month warranty period.
- 500 annual programming hours for enhancements or changes to the system. Any unused hours will be carried over to the following year.

##### Extended Support and Maintenance Agreement

A four (4) year fixed-cost, (paid in annual installments), Monday through Friday, 8 a.m. Central Time (CT) to 6 p.m. CT annual Maintenance and Support Plan to provide product updates, remedial onsite and remote maintenance and support services following the required no-additional-cost one (1) year warranty period. The ND Division of Emergency Management reserves the right to accept or reject this fixed cost annual maintenance contract. This Plan must, at a minimum, include:

- Vendor contact, phone number (hot lines / 800 numbers), email address, and procedure required to report system outages/problems and to request consulting services or other appropriate service.
- A detailed listing of the services provided, escalation policies, services and procedures to be provided including guaranteed service levels (and any exceptions or exclusions from these services) that are provided during the 4-year warranty period.
- 500 annual programming hours for enhancements or changes to the system. Any unused hours will be carried over to the following year.

### 2.02 Contract Type

This contract is a **Firm Fixed Price** contract.

### 2.03 Standard Contract Provision

The successful offeror will be required to sign and submit the **Personal Service Contract** attached to this RFP (Appendix A). The contractor must comply with the contract provisions set out in Appendix A. **No alteration of these provisions will be permitted without prior written approval from the ND Division of Emergency**

**Management.** Objections to any of the **Personal Service Contract** provisions must be set out in the offeror's proposal.

#### **2.04 Proposal as a Part of the Contract**

Part or all of this RFP and the successful proposal will be incorporated into the contract.

#### **2.05 Additional Terms and Conditions**

The State reserves the right to add, delete, or modify terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

#### **2.06 Contract Approval**

This RFP does not, by itself, obligate the State. The State's obligation will commence when the Director of the ND Division of Emergency Management, or the Director's designee, approves the contract. Upon written notice to the contractor, the State may set a different starting date for the contract. The State will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the State.

#### **2.07 Contract Changes - Unanticipated Amendments**

During the course of this contract, the contractor may be required to perform additional work. That work will be within the general scope of the initial contract. When additional work is required, the project manager designated by the State will provide the contractor a written description of the additional work and request the contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work. Cost and pricing data must be provided to justify the cost of such amendments.

The contractor will not commence additional work until the project manager has secured any required State approvals necessary for the amendment and issued a written contract amendment, approved by the Director of the ND Division of Emergency Management or the Director's designee.

#### **2.08 Indemnification and Insurance Requirements**

Offerors must review **the** indemnification and insurance requirements contained in the Personal Service Contract attached.

Objections to any of the provisions of the Indemnification and Insurance Requirements must be made in writing to the attention of the procurement officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written approval from the ND Division of Emergency Management in consultation with the North Dakota Division of Risk Management.

Upon receipt of the Notice of Intent to Award, the successful offeror must obtain the required insurance coverage and provide the procurement officer with proof of such coverage prior to contract approval. The coverage must be satisfactory to the North Dakota Division of Emergency Management, in consultation with the North Dakota Division of Risk Management. An offeror's failure to provide evidence of such insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

#### **2.09 Taxes and Taxpayer Identification**

The contractor must provide a valid Vendor Tax ID as a provision of the contract.

The State is not responsible for and will not pay local, state, or federal taxes. The State sales tax exemption number is E-2001, and certificates will be furnished upon request.

A contractor performing any contract, including service contracts, for the State of North Dakota, is not exempt from payment of sales or use tax on material and supplies used or consumed in carrying out such contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties. Contact the ND Tax Department at 701-328-3470 or visit their website at [www.ndtaxdepartment.com](http://www.ndtaxdepartment.com) for more information.

#### **2.10 F.O.B. Point**

All goods purchased through this contract will be F.O.B. final destination. Unless specifically stated otherwise, all prices offered must include the delivery costs to any location within the State of North Dakota.

#### **2.11 Proposed Payment Procedures**

The State will make payments based on a negotiated payment schedule. The project cost may be billed by the vendor to the ND Division of Emergency Management in installments over the duration of the project by the payment schedule provided in the scope of work. All payments should be based upon deliverable or milestone acceptance. The final payment will not be made until the entire contract, including implementation, training and user acceptance are completed and approved by the project manager.

DEM will not make any advanced payments before performance by the contractor under this contract.

#### **2.12 Contract Funding**

Approval or continuation of a contract resulting from this is contingent upon continuing appropriation. The contract may be terminated by the State or modified by agreement of both parties in the event funding from North Dakota State Legislature or other sources is not obtained and continued at sufficient levels.

#### **2.13 Payment Terms**

No payment will be made until the Director of the ND Division of Emergency Management or the Director's designee approves the contract.

Payment for commodities and services received under contracts will normally be made within thirty (30) calendar days after receipt and acceptance by DEM or after receipt of a correct invoice, whichever is later. Payment inquiries should be directed to the ND Division of Emergency Management, addressed to the procurement officer.

Under no conditions will the State be liable for the payment of any interest charges associated with the cost of the contract.

#### **2.14 Contract Personnel**

The project manager must approve any change of the contractor's project team members named in the proposal, in advance and in writing. Personnel changes that are not approved by the State may be grounds for the State to terminate the contract.

#### **2.15 Right to Inspect Place of Business**

At reasonable times, DEM may inspect those areas of the contractor's place of business that are related to the performance of a contract. If DEM makes such an inspection, the contractor must provide reasonable assistance.

## **2.16 Inspection & Modification - Reimbursement for Unacceptable Deliverables**

The contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project manager designated by the State. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. Should the project manager determine that corrections or modifications are necessary in order to accomplish its intent, the project manager may direct the contractor to make such changes. The contractor will not unreasonably withhold such changes.

Substantial failure of the contractor to perform the contract may cause the State to terminate the contract. In this event, the State may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

## **2.17 Termination for Default**

If the project manager designated by the North Dakota Division of Emergency Management determines that the contractor has refused to perform the work or has failed to perform the work with diligence as to ensure its timely and accurate completion, DEM may, by providing written notice to the contract, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the State's right to termination under the contract provisions of the Personal Service Contract attached.

The State reserves the right to terminate a contract in the event of breach of contract, serious misrepresentation, bankruptcy, fraud, collusion, or other unlawful acts. In the event of such termination, the State may also seek damages or other remedy.

## **2.18 Confidentiality**

Any records that are obtained or generated by the contractor under this contract are subject to North Dakota open records law regarding public records and handling of confidential information.

## **2.19 Work Product, Equipment, and Material**

All work product, equipment or materials created or purchased under this contract belong to the State and must be delivered to State at State's request upon termination of this contract, unless otherwise agreed in writing by the North Dakota Division of Emergency Management.

## **2.20 Source Code in Escrow**

Vendor agrees that it shall place and maintain an up-to-date copy of the Source Code in escrow with an escrow agent mutually acceptable to the parties. The escrow agreement will provide for the release of the Source Code, solely for the purpose of maintaining State's copy of the Software for State's internal administration purposes and subject to the provisions of this Agreement, in the event that Vendor is adjudged to be or admits in writing to be bankrupt or by corporate resolution ceases to carry on business with respect to the Software.

## **2.21 Independent Entity**

The contractor is an independent entity under this contract and is not a State employee for any purpose. The contractor retains sole and absolute discretion in the manner and means of carrying out the contractor's activities and responsibilities under the contract, except to the extent specified in the contract.

## **2.22 Assignment**

The contractor may not assign or otherwise transfer or delegate any right or duty without the procurement officer's express written consent. However, the contractor may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments

## **2.23 Disputes - Applicable Law and Venue**

Any dispute arising out of this agreement will be resolved under the laws of the State of North Dakota.

Any action commenced to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.

## **2.24 Informal Debriefing**

When the contract is completed, an informal debriefing may be performed at the discretion of the procurement officer or project manager designated by the ND Division of Emergency Management. If performed, the scope of the debriefing will be limited to the work performed by the contractor.

## **2.25 Performance Bond**

Offerors must obtain a letter of commitment for a performance bond from a bonding company and submit it with the proposal. The amount of the performance bond must be equal to 100% of the Offeror's services during the full term of the contract including software, implementation, and training. Details will be determined during contact negotiations.

If the contractor fails to satisfactorily perform the contract, the bonding company that provided the performance bond will be required to obtain timely performance of the contract.

The actual performance bond must be obtained from the bonding company and provided to the State within ten calendar days of the date of the Notice of Intent to Award. An offeror's failure to provide the performance bond, within the required time, will cause the State to reject the proposal.

## **2.26 Severability**

If any provision of the contract or agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the parties will be construed and enforced as if the contract did not contain the particular provision held to be invalid.

## APPENDIX A - PERSONAL SERVICE CONTRACT

The parties to this contract are the State of North Dakota, acting through its Division of Emergency Management ("State"), and \_\_\_\_\_ (Vendor);

### 1. SCOPE OF SERVICE

Vendor, in exchange for the compensation paid by the State under this contract, agrees to provide the following services:

[State Services]

### 2. TERM OF CONTRACT

The term of this contract is for a period of X months, commencing on the X day of Month, 2004, and terminating on the X day of Month, 2005.

### 3. COMPENSATION

State will pay for the services provided by Vendor under this contract an amount not to exceed \_\_\_\_\_ per \_\_\_\_\_, to be paid \_\_\_\_\_.

### 4. TERMINATION OF CONTRACT

**a. Termination without cause.** This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' written notice.

**b. Termination for lack of funding or authority.** The State may terminate this contract effective upon delivery of written notice to the Vendor, or on any later date stated in the notice, under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- 3) If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

**c. Termination for cause.** The State by written notice of default to the Vendor may terminate the whole or any part of this contract:

- 1) If the Vendor fails to provide services required by this contract within the time specified or any extension agreed to by the State; or
- 2) If the Vendor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of the State provided in the above clause related to defaults by the Vendor are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

### 5. FORCE MAJEURE

Vendor shall not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond the Vendor's reasonable control and the Vendor gives notice to the State immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

## **6. RENEWAL**

This contract will not automatically renew. State will provide written notice to Vendor of its intent to renew this contract at least thirty days before the scheduled termination date.

## **7. MERGER AND MODIFICATION**

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

## **8. SEVERABILITY**

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms shall not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

## **9. ASSIGNMENT AND SUBCONTRACTS**

Vendor may not assign or otherwise transfer or delegate any right or duty without the State's express written consent. However, the Vendor may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. Vendor is solely responsible for the performance of any subcontractor. Vendor shall not have the authority to contract for or incur obligations on behalf of the State.

## **10. NOTICE**

All notices or other communications required under this contract shall be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

[Name, Title, Address]

## **11. APPLICABLE LAW AND VENUE**

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.

## **12. SPOLIATION – NOTICE OF POTENTIAL CLAIMS**

Vendor shall promptly notify state of all potential claims that arise or result from this contract. Vendor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the state the opportunity to review and inspect the evidence, including the scene of an accident.

## **13. INDEMNITY**

Vendor shall defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers, and employees (North Dakota), from any and all claims of any nature, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this contract, except for claims resulting from or arising out of North Dakota's sole negligence. The legal defense provided by vendor to North Dakota under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for North Dakota is necessary. Vendor shall also defend, indemnify, and hold North Dakota harmless for all costs, expenses, and

attorneys' fees incurred in establishing and litigating the indemnification coverage provided in this section. The obligation in this section shall continue after termination of this contract, or any extensions or renewals of it.

#### **14. INSURANCE**

**a. Required Coverages.** Vendor shall secure and keep in force during the term of this contract, from insurance companies authorized to do business in North Dakota, the following insurance coverages covering the Vendor for any claims of any nature that may in any manner arise out of or result from this contract:

- 1) Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all North Dakota statutory requirements, including: a) an "all states endorsement" to cover claims occurring outside the state of North Dakota if any of the services provided under this contract involve work outside the state of North Dakota; and b) employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance if vendor is domiciled outside the state of North Dakota.

**b. General Insurance Requirements.** The insurance coverages listed above must meet the following additional requirements:

1) Any deductible or self insured retention amount or other similar obligation under the policies shall be the sole responsibility of the vendor. The amount of any deductible or self-retention is subject to approval by the state.

2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed and maintained for the term of this contract and any extensions with insurers rated "A" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. The policies shall be in form and terms approved by the State. "Follows form" means the excess policy must be written with the same terms and conditions as the policy to which it is excess.

3) State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Vendor in excess of the minimum requirements set forth above. The duty to indemnify State under Section 13 shall not be limited by the insurance required in this section.

4) State shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insureds. State shall have the same rights and coverages as Vendor under said policies. The additional insured endorsement for the commercial general liability policy shall be written on a form equivalent to the ISO 1985 CG 20 10 form, or such other form as approved by the State, and the endorsement shall not limit or delete State's coverage in any way based upon State's acts or omissions.

5) The insurance required in this section, through a policy or endorsement, shall include:

a. a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against NORTH DAKOTA;

b. a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State representative;

c. a provision that any attorney who represents State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;

d. a provision that Vendor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by State and that any insurance, self-insurance or self-retention maintained by State shall be excess of the Vendor's insurance and shall not contribute with it;



- e. cross liability/severability of interest coverage for all policies and endorsements.
- 6) The legal defense provided to State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for State is necessary.
- 7) Vendor shall furnish a certificate of insurance, the additional insured endorsement adding State as an additional insured, and, if requested, a copy of the insurance policy and all its endorsements, to the undersigned State representative prior to commencement of this contract.
- 8) Failure to provide insurance as required in this section is a material breach of contract entitling State to immediately terminate this contract.

#### **15. ATTORNEY FEES**

In the event a lawsuit is instituted by the State to obtain performance due of any kind under this contract, and the State is the prevailing party, Vendor shall, except when prohibited by N.D.C.C. § 28-26-04, pay the State's reasonable attorney fees and costs in connection with the lawsuit.

#### **16. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

The State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The State does not waive any right to a jury trial.

#### **17. CONFIDENTIALITY**

Vendor agrees not to use or disclose any information it receives from the State under this contract that the State has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by the State. The State agrees not to disclose any information it receives from Vendor that the Vendor has previously identified as confidential and which the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. The duty of State and Vendor to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

#### **18. COMPLIANCE WITH PUBLIC RECORDS LAW**

Vendor understands that, except for disclosures prohibited in Section 17, the State must disclose to the public upon request any records it receives from Vendor. Vendor further understands that any records that are obtained or generated by the Vendor under this contract, except for records that are confidential under Section 17, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Vendor agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.

#### **19. WORK PRODUCT, EQUIPMENT AND MATERIALS**

All work product, equipment or materials created or purchased under this contract belong to the State and must be delivered to State at State's request upon termination of this contract. Vendor agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to State all rights and interests Vendor may have in the materials it prepares under this contract, including any right to derivative use of the material. Vendor shall execute all necessary documents to enable State to protect its rights under this section.

#### **20. INDEPENDENT ENTITY**

Vendor is an independent entity under this contract and is not a State employee for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers'

Compensation Act. Vendor retains sole and absolute discretion in the manner and means of carrying out the Vendor's activities and responsibilities under this contract, except to the extent specified in this contract.

**21. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

Vendor agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. Vendor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. Vendor shall have and keep current at all times during the term of this contract all licenses and permits required by law.

**22. STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of Vendor relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. Vendor will maintain all such records for at least three years following completion of this contract.

**23. PREPAYMENT**

The State will not make any advance payments before performance by the Vendor under this contract. The state will pay based on agreed upon milestones and percentage of project completion. The state will hold the final payment until the Officer of DEM has signed an acceptance of the solution form.

**24. OWNERSHIP OF INFORMATION AT VENDOR LOCATIONS**

Any DEM application data, source code and programming related information hosted and or stored at the Vendor site (including employees and subcontractors homes and personal computers) is the property of DEM. DEM has the right to retrieve this information at any time and the Vendor must deliver all code, data and related information within 30 days of the written request.

**25. TAXPAYER ID**

Vendor's North Dakota tax ID number is: \_\_\_\_\_. Vendor's federal employer ID number is: \_\_\_\_\_.

**26. EFFECTIVENESS OF CONTRACT**

This contract is not effective until fully executed by both parties.

VENDOR\_\_\_\_\_

BY:\_\_\_\_\_

ITS:\_\_\_\_\_

DATE:\_\_\_\_\_

STATE OF NORTH DAKOTA

BY:\_\_\_\_\_

ITS:\_\_\_\_\_

DATE:\_\_\_\_\_

